

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

THOMAS WARREN)	
Claimant)	
VS.)	
)	Docket No. 227,783
ITC-INTERACTIVE TELESERVICES, INC.)	
Respondent)	
AND)	
)	
CONTINENTAL WESTERN INSURANCE CO.)	
Insurance Carrier)	

ORDER

The respondent and its insurance carrier requested review of the preliminary hearing Order dated November 13, 1997, entered by Administrative Law Judge John D. Clark.

ISSUES

The Administrative Law Judge granted claimant's request for medical and temporary total disability benefits. Respondent and its insurance carrier requested this review as they contend claimant failed to prove he sustained personal injury by accident arising out of and in the course of his employment with respondent. They contend claimant's alleged accident did not occur.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

The preliminary hearing Order should be affirmed.

Although circumstances exist which cast doubt upon claimant's testimony, the Administrative Law Judge believed claimant and awarded benefits. Because the Judge had the opportunity to observe claimant and all three of respondent's witnesses testify, in this instance the Appeals Board gives some deference to the Judge's assessment of the witnesses' credibility. Therefore, the Appeals Board also finds, for preliminary hearing purposes, that claimant sustained personal injury by accident arising out of and in the course of his employment with respondent when he fell while attempting to sit in his chair while at work on October 1, 1997.

As provided by K.S.A. 44-534a, as amended, the preliminary hearing findings, including those of the Appeals Board, are not binding and are subject to modification upon a full hearing on the claim.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated November 13, 1997, entered by Administrative Law Judge John D. Clark should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of January 1998.

BOARD MEMBER

c: Joni J. Franklin, Wichita, KS
 Robert G. Martin, Wichita, KS
 John D. Clark, Administrative Law Judge
 Philip S. Harness, Director